Office Supreme Court, U. S.
FILED
APR 6 1927
WM. R. STANSBURY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. [redacted] 11

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

MOTION FOR ORDER, RULE OR DIRECTION REQUIRING THE DEFENDANTS TO ANSWER THE BILL OF COMPLAINT HEREIN.

ALBERT OTTINGER,
Attorney General of the State of New York,

RANDALL J. LE BOEUF, JR.,
Deputy Attorney General,

Solicitors for Complainant.

In the Supreme Court of the United States

OCTOBER TERM, 1926.

No. 14, ORIGINAL.

STATE OF NEW YORK,
Complainant,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

OSCAR E. CARLSTROM,
Attorney General of the State of Illinois.
Solicitor for Defendant State of Illinois.

EDMUND S. ADCOCK,
Solicitor for Defendant, Sanitary District of Chicago.

Please take notice that the annexed motion for an order, rule or direction requiring the defendants to answer the bill of complaint of the complainant, State of New York, will be submitted at the opening of Court on the 11th day of April, 1927, or as soon thereafter as counsel can be heard.

That said motion will be submitted on the bill of complaint herein, and the affidavit of Randall J. LeBoeuf, Jr., verified April 2, 1927.

Dated, Albany, New York, April 2, 1927.

ALBERT OTTINGER,
Attorney General of the State of New York,
Solicitor for Complainant.

IN THE SUPREME COURT
of the
UNITED STATES

OCTOBER TERM, 1926.

No. 14, ORIGINAL.

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

MOTION FOR ORDER, RULE OR DIRECTION REQUIRING THE DEFENDANTS TO ANSWER THE BILL OF COMPLAINT HEREIN.

The State of New York by its Attorney General, Albert Ottinger, respectfully moves this Honorable Court for an order, rule or direction requiring the defendants, State of Illinois and Sanitary District of Chicago, to answer the bill of complaint of the complainant, State of New York herein, and to serve upon the solicitor for the said complainant a copy of such answer or for such other order, rule or direction in the premises as to this Honorable Court may seem proper.

The special reasons which prompt the complainant to so move this Honorable Court at this time are as follows:

1. The bill of complaint of the complainant, State of New York, was duly served upon the defendant, State of Illinois, on October 30, 1926, and on the defendant, Sanitary District of Chicago, on October 22 1926, and neither of said defendants have answered, demurred or otherwise pleaded thereto.

2. This Honorable Court, by order dated November 23, 1926, permitted complainant, State of New York, to participate in the trial of the related suit of the State of Wisconsin et al. against the Sanitary District of Chicago et al.

3. The trial of said suit of the State of Wisconsin et al. against the Sanitary District of Chicago et al. is being had before Honorable Charles E. Hughes, Special Master of this Honorable Court.

4. Subsequent to the making of the order permitting the State of New York to participate in the trial of the case of the State of Wisconsin et al. against the Sanitary District of Chicago et al. the Honorable Special Master, referring to said order of this Honorable Court, stated:

> "I shall receive the evidence which may be offered by the State of New York, in like manner as if its suit had been consolidated with the suit of the State of Wisconsin against the State of Illinois and Sanitary District of Chicago. It will be noted, however, that the order of the Supreme Court to that effect reserves the matters set forth in the third paragraph of the bill of complaint in the case of the State of New York against the State of Illinois and Sanitary District of Chicago.
>
> Accordingly, I shall not receive evidence with respect to any matter set forth in the third paragraph of the bill of complaint in that suit, until the further order of the Supreme Court."

And again, the Honorable Special Master, in construing the above mentioned order of this Honorable Court, said:

> "The Supreme Court, in ruling with reference to the admission of New York to participate in this hearing, expressly reserved the matters set forth in the third paragraph of the bill of the State of New York. I find by looking at the objections which were made to the motion of New York to participate that

it was stated that the defendants here, the State of Illinois and the Sanitary District of Chicago, desired by demurrer or motion to dismiss to test the sufficiency of the bill of complaint and particularly paragraph third.

It would appear that it was that statement which underlay the provision of the order of the Supreme Court that the Court made its order without prejudice to authority to make the order which it may deem proper respecting matters set forth in the third paragraph and the issues which may arise from that paragraph and the bill of complaint. In other words, if the defendants, as indicated in their motion papers were to make a motion to strike or propose a demurrer to the bill of New York, then the Supreme Court would rule upon the question as to whether or not evidence should be taken with respect to the issues reserved."

5. Neither the defendant, the State of Illinois, nor the defendant, the Sanitary District of Chicago, have made any motion either to dismiss the bill of complaint of the State of New York or to strike out any part or paragraph of that bill.

6. The State of New York has participated in the trial of the Wisconsin case in accordance with the order of this Honorable Court as interpreted by the Honorable Special Master as hereinabove set forth.

7. So that there may be no misapprehension on the part of this Honorable Court or the solicitors for the respective parties defendant hereto regarding the issues intended to be raised by the third paragraph of the New York bill of complaint, your orator respectfully declares that the complainant, the State of New York, did not intend thereby to raise and does not now raise nor will it hereafter raise, in the trial of this suit, the issue as to the constitutionality of the Federal Power Act as applicable to the waters of the State of New York. The complainant, State of New

York, desires only to present proof and offer testimony under the third paragraph of its bill of complaint tending to show that the State of New York has certain interests in the power resources of the Niagara and St. Lawrence rivers and that the diversion of water from Lake Michigan by the defendants has and will impair such water power rights and that the Secretary of War is and was without power or authority to permit such injury to such water power rights through the issuance of any permit either past or future.

The issues involved in both the case of the State of Wisconsin et al. v. The Sanitary District of Chicago et al. and in the case of New York v. Sanitary District of Chicago et al., are of great importance and involve the consideration of extensive testimony. It is, therefore, desirable to eliminate the further issue of the constitutionality of the Federal Power Act in this case, which is not necessary to a determination of the issues raised by the Chicago diversion of Lake Michigan waters. By so doing, however, the State of New York does not waive the right to contest the constitutionality of said Federal Power Act by any later appropriate proceeding.

8. It is desirable before the final submission of the Wisconsin case that the defendants be required to answer, or otherwise plead, to the New York bill of complaint to the end that this Honorable Court will have before it at one time all the issues raised by the complainant states regarding the diversion of water by the defendants from Lake Michigan and the effect thereof.

Dated, Albany, N. Y., April 2, 1927.

ALBERT OTTINGER,
Attorney General of the State of New York,
Solicitor for Complainant,
The Capitol, Albany, N. Y.

Randall J. LeBoeuf, Jr.,
Deputy Attorney General.

IN THE SUPREME COURT
of the
UNITED STATES

OCTOBER TERM, 1926.

No. 14, ORIGINAL.

STATE OF NEW YORK,
Complainant,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

United States of America,
State of New York,
County of Albany,
ss.:

Randall J. LeBoeuf, Jr., being first duly sworn, on oath says that he is a duly appointed, qualified and acting Deputy Attorney General of the State of New York, in charge of the above entitled case, and is authorized to make this affidavit to be used on the motion hereto annexed.

That the bill of complaint of the complainant, State of New York, was duly served on the defendant, State of Illinois, on the 30th day of October, 1926, and on the Sanitary District of Chicago on the 22nd of October, 1926; that said defendants nor either of them have answered, demurred or otherwise pleaded to the bill of complaint of the complainant, State of New York herein; that said defendants, nor either of them, have made any motion to dismiss said bill of complaint or to strike out any part or paragraph or portion of said bill of complaint.

Deponent further says that in the related suit of the State of Wisconsin et al. against the State of Illinois and Sanitary District of Chicago et al. the taking of testimony before Honorable Charles E. Hughes, Special Master, was begun November 8, 1926, at Washington, D. C., and has continued from time to time and was concluded March 31, 1927.

Proposed findings of fact and conclusions of law are to be submitted to the Special Master and the final argument had on May 31, 1927, and immediately thereafter.

Deponent further says that while the State of New York has participated in the trial of the Wisconsin case, pursuant to the order of this Honorable Court, its participation has been limited by the order of this Court as stated by the Honorable Special Master and set forth in the motion hereto attached.

Deponent respectfully says that he deems it desirable that the New York case may be submitted to this Honorable Court simultaneously with the Wisconsin case, so that at one time the Court may determine all of the issues raised by the Chicago diversion of Lake Michigan waters.

RANDALL J. LEBOEUF, JR.

Subscribed and sworn to before
me this 2nd day of April, 1927.

Margaret C. Dumpleton

Notary Public,
Albany County, (Notarial Seal)
State of New York.